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10/712,890	11/12/2003	Timothy Addington	43314/270282	9642

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EXAMINER

NGUYEN, PHILLIP H

ART UNIT	PAPER NUMBER
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2191

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10/31/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/712,890

Applicant(s)

ADDINGTON ET AL.

Examiner

Phillip H. Nguyen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 August 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-20,22-29 and 31-58 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1,3-20,22 and 41-48 is/are allowed.
- 6) ☒ Claim(s) 31-33,37-40 and 49-57 is/are rejected.
- 7) ☒ Claim(s) 23-29 and 34-36 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input checked="" type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date. _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This action is in response to the amendment filed on 8/10/2007.
2. Claims 1, 3-20, 22-29 and 31-58 are pending. Claims 1, 14, 23, 31, 37, 41, 49, 52 and 58 are independent claims.

Response to Amendment

3. Claims 2, 21 and 30 have been canceled; Claims 1, 14, 22, 23, 37 and 41 have been amended.

Response to Arguments

4. Applicant's arguments with respect to claims 1, 3-20, 22-29 and 31-58 have been considered but are moot in view of the new ground(s) of rejection.

Double Patenting

5. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

6. Claim 41 is rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 22 of U.S. Patent No. 7,194,756. Although the conflicting claims are not identical, they are not patentably distinct from each other because limitations in one claim can obviously be applicable in the corresponding claim.

The following table demonstrates the reason for rejection.

Application No. 10/712890	U.S. Patent No. 7,194,756
41. A method of loading software comprising:	22. A provisioning system comprising
Loading a host protocol file associated with a type of host;	A server receiving a host protocol file comprising a plurality of configuration commands and associated host protocols wherein each configuration command pertains to an operation capable of being performed in a host and each associated host protocol comprises protocol data for generating an associated host-specific protocol configuration command, wherein

	the host is a device capable of processing digital video data and is associated with a host type indicating a manufacturer and a host model of manufacturer,
Loading a host profile associated with the type of host;	The server receiving a host profile comprising feature descriptors of the host type, the server receiving a service parameter data file associated with a service provided on a cable network,
Processing the host profile to provide a user-interface for selecting at least one service related parameters associated with a service;	the server displaying to a user the feature descriptors from the host profile,
Receiving a user input to determine the at least one service related parameter;	receiving user input, and
Using the host protocol file and the at least one service related parameter to generate a host configuration message; and	process the service data, the user input, and the host protocol file to produce at least one host-specific protocol configuration message; and
Associating the host configuration message with the type of host.	A memory for storing the at least one host-specific protocol configuration message, the memory associating the host-specific

	protocol configuration message with a service identifier and the host type.
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Allowable Subject Matter

7. Claims 1, 3-20, 22 and 41-48 are allowed.
8. Claims 23-29 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.
9. Claims 34-36 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claim Rejections - 35 USC § 112

10. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
11. Claims 23-29 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claims 23 recites "...wherein the host is associated with a specific host manufacturer and a model of the specific host manufacturer" is unclear to examiner. Examiner assumes that the applicant is intended to state "...wherein the host software file is associated with a ..."

For examining purposes, examiner assumes that *wherein the host software file is associated with a specific host manufacturer and a model of the specific host manufacturer*. Claims 24-29 directly or indirectly depend on claim 23 and therefore suffer the same deficiency set forth to claim 23.

Claim Rejections - 35 USC § 103

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

13. Claims 31-33, 37-40 and 49-57 are rejected under 35 U.S.C. 103(a) as being unpatentable over Iggulden et al. (United States Patent No.: US 6,256,378 B1).

As per claim 31:

Iggulden discloses:

- receiving a host software file associated with a specific host manufacturer and a model associated with the specific host manufacturer (see at least col. 5, lines 12-24 "***server 14 preferably receives data from the appliance manufacturer. Such data may be received periodically as new model appliances are released by the manufacturer...insuring that the appropriate information for appliance 10 is obtained by server 14 is to prompt the appliance owner to input the serial number of the appliance at computer 12***")

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- determining an enhanced services system to receive the host software file (see at least col. 5, lines 12 "**server 14 preferably receives data from the appliance manufacturer**" – the server 14 is enhanced services system that selected to receive data from the manufacturer);
- transferring the host software from the host file database to the enhanced services system (see at least **FIGS. 1-2 and texts for further expanding their features**).

Iggulden does not explicitly disclose:

- establishing a connection from the enhanced service system to a host file database;
- authenticating the enhanced services system to the host file database; and
- recording an indication of the date and time associated with the transferring of the host software to the enhanced services system.

However, official notice is taken that the use of database at the server for storing the data received from the manufacturer and the use of date and time (e.g., timestamp) for the received data by the appliance 10 are well known to the art. One would have been motivated to allow the server 14 to use a database to store data received from the manufacturer before transfer to the appliance 10 to easy organize, manage, access, etc. Furthermore, one of ordinary skill in the art can recognize that an authentication is performed every time the server is connected to the database for security purposes. Finally, a timestamp is commonly used to record date and time to indicate when the

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data have been received and saved to the database for many purposes such as updating, billing, managing, maintenance, etc.

As per claim 32:

Iggulden does not explicitly disclose:

- wherein the host software comprises a host protocol file and a host profile file.

However, it would have been obvious to one having an ordinary skill in the art at the time the invention was made to recognize that the data downloaded from the manufacturer must also comprised data that use to configure the appliance. One would have been motivated to include a host protocol file and a host profile file with the data for configuring the appliance to properly operating with the new data.

As per claim 33:

Iggulden further discloses:

- wherein transferring the software uses a file transfer protocol over the Internet (see at least col. 4, lines 53 "**World Wide Web**" – transmit data using standard Internet Protocol (IP)).

As per claims 37 and 58:

Iggulden further discloses:

- communicating a software module associated with a brand and model of a consumer electronics host device to a host file database (see at least col. 5, lines

12-24 "**server 14 preferably receives data from the appliance manufacturer.**

Such data may be received periodically as new model appliances are

released by the manufacturer...insuring that the appropriate information for

appliance 10 is obtained by server 14 is to prompt the appliance owner to

input the serial number of the appliance at computer 12");

- detecting activation of a host, the host associated with the host manufacturer and further associated with a model of the host manufacturer, the host connected to the cable distribution network (see at least **FIGS. 1-2 and texts for further expanding their features**); and
- transmitting the software module from the server to the host (see at least **FIGS. 1-2 and texts for further expanding their features**).

Iggulden does not explicitly disclose:

- communicating a certification indication associated with the software module to the host file database, the host file database recording the certification indication in association with the software module; and
- communicating the software module from the host file database to an enhanced services system, the enhanced services system comprising a server (see at least FIGS. 1-2 "**server 14**") and a database for storing the software module, the server operatively connected to a cable distribution network.

However, official notice is taken that communicating a certification indication associated with the software module to the host file database and the use of database for storing the data transferred from the manufacturer are well known to the art. One would have

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been motivated to attach to the data a certificate to confirming the authenticity of the software manufacturer. Furthermore, the use a database to store data received from the manufacturer before transfer to the appliance 10 to easy organize, manage, access, etc.

As per claim 38:

Iggulden further discloses:

- wherein the detecting activation of a host is initiated by the receipt of a message from a host transmitted in a two-way cable network (see at least ***FIGS. 1-2 and texts for further expanding their features***).

As per claim 39:

Iggulden further discloses:

- recording in a enhanced services system an indication associated with transmitting the software module from the server to the host (see at least col. 6, lines 6-7 "***Indicator 110 may confirm to the user that the data has been transmitted***").

As per claim 40:

Iggulden further discloses:

- executing the software module on a processor in the host (***It is inherent in order to fulfill the software downloading purposes***).

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As per claim 49:

Iggulden further discloses:

- a data processing system transmitting a host software file (see at least col. 5, lines 13-14 "**server 14 preferably receives data from the appliance manufacturer**"; also further see **FIGS. 1-2 and texts for further expanding their features** – the manufacturer is considered as a data processing system), the data processing system comprising a database capable of receiving and storing the host software file and maintaining an association of the host software file with a host manufacturer, the database further maintaining an association of the host software file with a specific host model of the host manufacturer, the database storing a certification file associated with the host software file, the database associating the host software file associated with an enhanced services system; and
- a communication network, operatively connected to the data processing system, receiving the host software file from the data processing system and transferring the host software file to the enhanced services system (see at least **FIGS. 1-2 and texts for further expanding their features**).

Iggulden does not explicitly disclose:

- the data processing system comprising a database capable of receiving and storing the host software file and maintaining an association of the host software file with a host manufacturer, the database further maintaining an association of the host software file with a specific host model of the host manufacturer, the

database storing a certification file associated with the host software file, the database associating the host software file associated with an enhanced services system.

However, official notice is taken that the use of database for storing software, certificate about the software, and any association of the software with a specific appliance serial number are well known to the art. One would have been motivated to use a database at the appliance manufacturer for maintaining new software and any data associating the software with a specific appliance serial number plus a certificate about the software for marketing purposes.

As per claim 50:

Iggulden further discloses:

- wherein the communication network comprises the Internet (see at least col. 4, line 53 "**World Wide Web**").

As per claim 51:

- a cable distribution network operatively connected to the enhanced services system at a headend of the cable distribution network capable of receiving the host software file from the enhanced services system (see at least **FIGS. 1-3 and texts for further expanding their features** – the transfer device is considered as a headend device).

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As per claim 52:

Iggulden further discloses:

- an enhanced services system operatively connected to a communication network, receiving and storing at least one host software file in a database, wherein the database stores at least one host address associated with the host software file (see at least **FIGS. 1-2 and texts for further expanding their features**); and
- a cable distribution network having a headend, operatively connected to the enhanced services system at the headend receiving the host file from the enhanced services system and transmitting the host software file to a host associated with the host address (see at least **FIGS. 1-2 and texts for further expanding their features** – the transfer device 16 is considered as a headend).

Iggulden does not explicitly disclose:

- the use of database.

However, official notice is taken that the use of database for storing received software and any address of the appliance to receive the software. One would have been motivated to use a database to store the received software and the address of the appliance to ensure that the received software is associated with the specific appliance for distributing purposes.

As per claim 53:

Iggulden further discloses:

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- wherein the database further stores a host type associated with the host software file, the host type comprising a host manufacturer identifier and a model identifier of the host manufacturer (see at least col. 5, lines 20-26 “...**since the serial number 14 for use in subsequent programming of the same appliance...**” – serial number 14 is considered as manufacturer/model id).

As per claim 54:

Iggulden further discloses:

- a host connected to the cable distribution network, the host receiving the host software file (see at least **FIGS. 1-2 and texts for further expanding their features**).

As per claim 55:

Iggulden further discloses:

- wherein the cable distribution network supports two-way communication (see at least col. 5, lines 2-3 “**two way communications are most conveniently established...**”).

As per claim 56:

Iggulden further discloses:

- wherein the cable distribution network is a one-way communication network (see at least col. 4, line 65 “**one way communication**”).

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As per claim 57:

Iggulden further discloses:

- wherein the database further stores an indication of the host software file transmitted to the host (see at least col. 6, lines 6-7 "***Indicator 110 may confirm to the user hat the data has been transmitted***").

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phillip H. Nguyen whose telephone number is (571) 270-1070. The examiner can normally be reached on Monday - Thursday 10:00 AM - 3:00 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wei Y. Zhen can be reached on (571) 272-3708. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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10/16/2007



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